

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt #

Book Page

No. Pages: 24

Instrument: MISCELLANEOUS DOCUMENT

Control #: Unrecorded #7800799

Index #: Unassigned-1412206

Date:

Time:

Return To:
LEANDER LAUREL JAMES IV

Kepler, Kevin

The Diocese of Rochester aka Roman Catholic Diocese of
Rochester, a religious corporation
Church of the Nativity of The Blessed Virgin Mary, a religious
corporation

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



SUPREME COURT STATE OF NEW YORK
COUNTY OF MONROE

-----X

KEVIN KEPLER

Plaintiff,

v.

**VERIFIED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Index No.:

THE DIOCESE OF ROCHESTER (a/k/a
“Roman Catholic Diocese of Rochester”), a
religious corporation; and

CHURCH OF THE NATIVITY OF THE
BLESSED VIRGIN MARY, a religious
corporation,

Defendants.

-----X

Plaintiff KEVIN KEPLER, by and through undersigned counsel, brings this action against THE DIOCESE OF ROCHESTER (a/k/a “Roman Catholic Diocese of Rochester”), a religious corporation; and CHURCH OF THE NATIVITY OF THE BLESSED VIRGIN MARY, a religious corporation, and alleges, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

I. JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR § 301 and § 302, because Defendants reside in the State of New York and committed tortious acts within the State.

2. Jurisdiction is proper because this Complaint seeks monetary damages in excess of \$25,000.00, exclusive of interest, costs, and attorney’s fees.

3. Venue is proper in this Court pursuant to CPLR § 503. The Defendant The Diocese of Rochester has its principal place of business in Monroe County. The Defendant Church of the

Nativity of the Blessed Virgin Mary has its principal place of business in Monroe County. The acts and omissions giving rise to this Complaint also occurred in Monroe County.

4. Plaintiff brings this suit within the extended time period as provided for in Sections 208 and 214-G of the Civil Practice Law.

II. PARTIES

5. Plaintiff Kevin Kepler is an adult resident of the State of Arizona, residing in Mesa, Arizona and is otherwise *sui juris*.

6. Defendant The Diocese of Rochester is a Roman Catholic diocese and religious corporation organized pursuant to the Religious Corporations Law, licensed and doing business in the State of New York with a principal place of business at 1150 Buffalo Road, Rochester, New York 14624. At all relevant times, The Diocese of Rochester oversaw, managed, controlled, directed, and operated parishes, schools, and churches within its geographical boundaries, including Defendant Church of the Nativity of the Blessed Virgin Mary. At all relevant times, The Diocese of Rochester oversaw, managed, controlled, and directed priests assigned to work in parishes or churches of the Diocese, including Fr. Robert F. O'Neill. Defendant The Diocese of Rochester can be served at 1150 Buffalo Road, Rochester, New York 14624, by delivering the summons and complaint to its authorized agent Bishop Salvatore Matano, or to said Defendant's attorney, Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

7. Defendant Church of the Nativity of the Blessed Virgin Mary (hereinafter "Church of the Nativity") is a Roman Catholic parish within and under the authority of The Diocese of Rochester and is a religious corporation organized pursuant to the Religious Corporations law with a principal place of business at 152 Main St., Brockport, New York 14420, in Monroe County,

New York. Said Defendant can be served by delivering the summons and complaint to its attorney, Philip G. Spellane of Harris Beach PLLC at 99 Gamsey Road, Pittsford, New York 14534, whom said Defendant has also authorized to accept service of process.

8. The provisions of Section 1602 of the CPLR do not apply to the within action including nondelegable duty and/or the doctrine of respondeat superior.

III. FACTUAL ALLEGATIONS

a) Plaintiff Kevin Kepler's Introduction to Fr. Robert O'Neill; the Abuse

9. At all times material, Plaintiff Kevin Kepler revered and trusted the Roman Catholic Church, The Diocese of Rochester, the Bishop of The Diocese of Rochester, priests, Fr. O'Neill, and all Roman Catholic clergy. Plaintiff was raised in a devout Roman Catholic family, regularly celebrated mass, received the sacraments, and participated in church-related activities. His family attended Church of the Nativity of the Blessed Virgin Mary in Brockport, New York. Plaintiff was taught to believe priests, including Fr. O'Neill, were special, sacred, pure and better than lay people. He was taught to trust priests, to do what they said and to never disparage them.

10. At the time of the events described herein, Defendants The Diocese of Rochester and/or Church of the Nativity was the legal owner and/or tenant/occupier of the church located at 152 Main St., Brockport, New York 14420.

11. At the time of the events described herein, Fr. Robert F. O'Neill was a priest in residence at Church of the Nativity, where he served as assistant pastor. It is at Church of the Nativity that Kevin Kepler first became aware of Fr. O'Neill, although he was not formally introduced to Fr. O'Neill until Summer 1964.

12. In the Summer of 1964, Kevin's younger twin brothers received their confirmation into the Catholic faith. Kevin's parents organized a picnic at their house following the confirmation

and invited Fr. O'Neill and the other priests at Church of the Nativity to attend. Kevin was approximately ten years old at this time. His family lived on a farm in the country where they grew corn and other crops.

13. Fr. O'Neill approached Kevin at the picnic; Kevin was sitting at a picnic table with his cousins under two tall pine trees in front of his parents' house. Fr. O'Neill sat down and started to talk to Kevin about becoming an altar boy for Defendant Church of the Nativity, where O'Neill was employed as an associate pastor. Fr. O'Neill asked Kevin if he wanted to take a walk to discuss it more.

14. Fr. O'Neill led Kevin around the east side of the house to a secluded area between some lilac bushes and the corn field. He led Kevin over to the corn. Fr. O'Neill told Kevin he had to be past puberty to be an altar boy. When Kevin asked what Fr. O'Neill meant by that statement, Fr. O'Neill said he would show Kevin. Fr. O'Neill then reached inside Kevin's pants and grabbed Kevin's genitals.

15. Fr. O'Neill masturbated Kevin and pulled Kevin's pants down to his ankles. He then performed oral sex on Kevin for a few minutes; while performing these actions on Kevin, Fr. O'Neill stroked himself over his clothing. Kevin was scared and told Fr. O'Neill to stop. Fr. O'Neill then pulled Kevin's pants up and told Kevin he was ready to be an altar boy. He instructed Kevin not to tell anyone or he wouldn't be able to be an altar boy. Fr. O'Neill then led Kevin back to the picnic tables, but everyone was gone. Kevin ran to the front of his parents' property and climbed a tall maple tree, refusing to come down for several hours.

16. Fr. O'Neill acted in a priestly role towards Plaintiff. He isolated Plaintiff from the other partygoers under the guise of delivering instruction regarding the altar boy program at Defendant Church of the Nativity and for Defendants.

17. Fr. O'Neill exerted authority over Plaintiff and instructed Plaintiff to remain silent about the abuse. Plaintiff feared what would happen if he disobeyed this priest.

18. As a direct and proximate result of Fr. O'Neill's offensive and unwanted sexual touching, Plaintiff Kevin Kepler has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful activity, loss of income and other damages, past and future.

19. As a direct and proximate result of Fr. O'Neill's offensive and unwanted sexual touching, Plaintiff Kevin Kepler has been prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of his life.

20. As a direct and proximate result of Fr. O'Neill's offensive and unwanted sexual touching, Plaintiff Kevin Kepler has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

b) Defendants' Responsibility for the Abuse Committed by Fr. O'Neill

21. At all times relevant to the allegations set forth herein, Father Robert F. O'Neill was a priest employed, trained, ordained, assigned, supervised, and managed by the Defendant The Diocese of Rochester and was an employee and/or agent for said Defendant. All acts and omissions of Fr. O'Neill were done in the course and scope of his employment and/or agency for Defendant The Diocese of Rochester.

22. At all times relevant to the allegations set forth herein, Fr. Robert O'Neill was a priest employed, trained, supervised, and managed by the Defendant Church of the Nativity and was an employee and/or agent for said Defendant. All acts and omissions of Fr. O'Neill were done in the course and scope of his employment and/or agency for Defendant Church of the Nativity.

23. Defendant The Diocese of Rochester ordained Fr. Robert F. O'Neill as a Roman Catholic priest on June 2, 1962.

24. The Diocese of Rochester assigned Fr. O'Neill to serve as associate pastor at Defendant Church of the Nativity of the Blessed Virgin Mary in Brockport, New York. He remained in that position until 1967 when The Diocese of Rochester transferred Fr. O'Neill to Holy Cross Church in Rochester, New York.

25. Fr. O'Neill served as an associate pastor at Holy Cross Church and leader of the Charlotte Teen Council until June 1973, when he was elected to the Diocesan Tribunal. The Diocesan Tribunal is a judicial forum tasked with adjudicating parishioner rights under canon law, particularly marital disputes. Fr. O'Neill became the Officialis, or Chief Judge, of the Diocesan Tribunal in June 1974. Fr. O'Neill served on the Diocesan Tribunal for many years while also performing pastoral duties at various parishes within The Diocese of Rochester.

26. In June 1980, Fr. O'Neill was elected Vice President of the Diocesan Priests' Council. He became the Council's President in June 1981.

27. In April 1983, Fr. O'Neill was elected President of the New York State Priests' Council. While Fr. O'Neill was serving in these adjudicatory roles for The Diocese of Rochester and the State Priests' Council, Fr. O'Neill lived in residence at several parishes within The Diocese of Rochester, including at St. Boniface Church and St. John the Evangelist Church.

28. In June 1987, The Diocese of Rochester assigned Fr. O'Neill to work as a pastor at the Church of the Annunciation, located at 1754 Norton St., Rochester, NY, 14609. Fr. O'Neill was also affiliated with Bishop Kearney High School and the local Boy Scouts of America programs at this time.

29. In 1993, Fr. O'Neill was appointed to a second six-year term as pastor at Church of

the Annunciation. He briefly took a sabbatical between March and June of 1995 for undisclosed reasons.

30. In 1996, The Diocese of Rochester assigned Fr. O'Neill to serve as co-administrator of St. Philip Neri Church while also continuing his duties as pastor at Church of the Annunciation.

31. In 1998, The Diocese of Rochester transferred Fr. O'Neill to serve as the administrator of St. Christopher Church in Chili, NY and in April 1999, the Diocese appointed Fr. O'Neill as pastor of St. Christopher Church.

32. In June 2001, The Diocese of Rochester removed Fr. O'Neill from his pastorate, citing his declining health as the reason for his removal. Fr. O'Neill officially retired in May 2002.

33. Around that same time, in May 2002, three men accused Fr. O'Neill of sexual misconduct and sexual abuse when the men were children during the 1970s and 1980s. After investigating these claims and deeming them credible, The Diocese of Rochester placed restrictions on Fr. O'Neill. He could no longer participate in any ministry, wear clerical clothing, or reside in parish or Diocesan housing. Seven additional survivors of Fr. O'Neill joined the lawsuit in June 2002.

34. Through this lawsuit, several details about the Diocese's knowledge of Fr. O'Neill's crimes were uncovered by the press. Notably, two minor parishioners accused Fr. O'Neill of sexual misconduct between 1977 and 1981; the fathers of these parishioners jointly sent a letter to Dennis Hickey, the Auxiliary Bishop of The Diocese of Rochester from 1968 to 1990.

35. According to Michael Tedesco, the spokesman for The Diocese of Rochester at the time the above-mentioned lawsuit was filed, the Diocese investigated a complaint about O'Neill in the 1970's involving inappropriate behavior with a minor. The Diocese sent O'Neill away for treatment at an undisclosed location but did not remove him from ministry nor place any

restrictions on his access to and interaction with minors.

36. Defendant The Diocese of Rochester received parishioner complaints about Fr. O'Neill for years. In 1972, parishioners at Holy Cross Church approached The Diocese of Rochester with concerns that O'Neill was heavily drinking and acting inappropriately with boys. Fr. O'Neill was removed from his position at Holy Cross shortly thereafter and assigned to the Diocesan tribunal.

37. Three boys molested by O'Neill and another priest in The Diocese of Rochester approached former Bishop Matthew Clark in approximately 1980, and explained to Bishop Clark, in detail, that Fr. O'Neill had sexually molested them. Bishop Clark failed to remove Fr. O'Neill from ministry at that time or place restrictions on his access to and interaction with minors.

38. Fr. O'Neill reportedly had many people stay with him in residence at his assigned churches throughout his ministerial career, including at least one teenage boy during the 1980s. The Diocese had knowledge that the boy was staying on Church property with Fr. O'Neill.

39. A parishioner at St. Christopher's Church in Chili complained to The Diocese of Rochester about Fr. O'Neill in 1998. At that time, she received assurances from The Diocese of Rochester that The Diocese had instructed Fr. O'Neill to refrain from taking kids to his cottage.

40. In December 2002, the above-mentioned lawsuit against The Diocese of Rochester and Fr. O'Neill was dismissed on statute of limitation grounds. Due to the recent passage of the Child Victims Act in New York, the previous statute of limitations for child sexual abuse cases does not apply to this action.

41. Fr. Robert F. O'Neill died in 2005.

42. On information and belief, Fr. O'Neill was a notorious sexual predator who violated many boys while under the employment and/or agency of Defendant The Diocese of Rochester.

43. By holding Fr. O'Neill out as safe to work with children, and by undertaking the custody, supervision of, and/or care of the minor Plaintiff, Defendants entered a special relationship with the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendants' undertaking the care and guidance of the then vulnerable Plaintiff, Defendants held a position of empowerment over Plaintiff.

44. Furthermore, Defendants, by holding themselves out as being able to provide a safe environment for children, solicited, and/or accepted this position of empowerment. This empowerment prevented the Plaintiff from effectively protecting himself, and Defendants thus entered a special relationship with Plaintiff. By holding themselves out as a safe, moral, and trusted institution to Plaintiff's parents, Defendants induced Plaintiff's parents to entrust their child to Defendants and thereby deprived Plaintiff of the protection of his family.

45. At all times material, Fr. O'Neill's sexual abuse of Plaintiff was foreseeable. The problem of clergy sexual abuse of minors is well-documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book of Gomorrah* that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6). Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo*, about the punishment for "A cleric or monk who seduces youths or young boys" being public flogging, loss of tonsure and six months in jail, among other punishment. In 1143 or 1144, a professor at the University of Bologna named Gratian, known as the "Father of the Science of Canon Law," identified in his work the *Decretum*, the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

46. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, which was based upon the 1917 Code of Canon Law which stated:

Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.

47. This knowledge that Catholic clergy were sexually abusing minors continued through the middle ages and into recent history. In 1962, Pope John XXIII approved the publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law for solicitation of sex in the confessional. This document contained prohibitions prohibiting clergy from having sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world and was to be kept by them with the deepest secrecy. In addition, this document reflected the Catholic church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

48. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order of priests called the Servants of the Paracletes. This religious order was founded in order to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he had already treated a handful of priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, "code 3," to describe the offense. By 1966, the Paracletes began specializing in treatment of pedophile Catholic clergy.

49. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that as early as February 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

50. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled *The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood* to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity manifested itself in heterosexual and homosexual activity. In 1990, psychologist and priest, A.W. Richard Sipe, published a study involving 1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

51. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled *“The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner”* by Fr. Thomas Doyle, F. Ray Mouton and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A significant portion of this document describes how significant the sexual abuse of children by Catholic clergy had become.

52. Upon information and belief, before Plaintiff was sexually abused by Fr. O’Neill, Defendants had actual or constructive knowledge of material facts regarding Fr. O’Neill’s sexual misconduct, impulses, and behavior.

53. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Fr. O’Neill’s problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

NEGLIGENCE/GROSS NEGLIGENCE

54. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs

as if fully set forth herein.

55. Defendants allowed Fr. O'Neill to have unsupervised and unlimited access to minor children while in a position of authority over them, including at Church of the Nativity in Brockport, New York, located within the geographical confines of The Diocese of Rochester.

56. At all times material, Fr. O'Neill was employed by the Defendant The Diocese of Rochester and was an agent of the same.

57. At all times material, Fr. O'Neill was employed by Church of the Nativity and was an agent of the same.

58. At all times material, Fr. O'Neill remained under the direct supervision, employ and control of the Defendants.

59. Upon information and belief, before Plaintiff was sexually abused by Fr. O'Neill, Defendants had actual or constructive knowledge of material facts regarding Fr. O'Neill's sexual misconduct, impulses and behavior, and each had actual or constructive knowledge that he posed a sexual risk of harm to children.

60. Despite clear indications of danger, Defendants took no steps to discover the specific nature of Fr. O'Neill's problems or to determine whether he was fit to work with children or to protect children from him, thereby increasing the likelihood that Plaintiff would be harmed.

61. Plaintiff Kevin Kepler was raised in a devout Roman Catholic family, regularly celebrated mass, received the sacraments, and participated in church-related activities. Plaintiff, therefore, developed great admiration, trust, reverence, and respect for the Roman Catholic Church and its agents, The Diocese of Rochester and its agents, including the Bishop, and Fr. O'Neill.

62. Defendants held Fr. O'Neill out as a qualified Roman Catholic priest who was safe with children and undertook the education, religious instruction, and spiritual and emotional

guidance of Plaintiff. The Bishop exercised a direct role over Plaintiff. Accordingly, Plaintiff placed trust in Defendants so that Defendants and their agents gained superiority and influence over Plaintiff. Defendants entered into a special relationship with Plaintiff and his family.

63. Defendants knew or should have known that some of the leaders and people working at Catholic institutions within The Diocese of Rochester were not safe for children.

64. Defendants knew or should have known that they lacked sufficient information about whether their leaders and people working at Catholic institutions within The Diocese of Rochester were safe around children.

65. Defendants knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within The Diocese of Rochester.

66. Defendants knew or should have known that they lacked sufficient information about whether there was a risk of child sex abuse for children participating in Catholic programs and activities within The Diocese of Rochester.

67. Defendants knew or should have known that they had other agents who had sexually molested children. Defendants knew or should have known that child molesters have a high rate of recidivism. Defendants knew or should have known that there was a specific danger of child sex abuse for children participating in Defendants' programs.

68. Defendants held their leaders and agents, including Fr. O'Neill, out as people of high morals and as possessing immense power. They taught families and children to obey, respect, and revere these leaders and agents.

69. Defendants solicited youth and families to their programs and schools, including Plaintiff. They specifically marketed to youth and families in order to recruit youth and families to their programs.

70. Defendants held out the people that worked in the programs, including Fr. O'Neill, as safe for children/youth.

71. Defendants made negligent representations to Plaintiff and his family while Plaintiff was a minor. Plaintiff and his family relied upon these representations, which resulted in Plaintiff being put in a vulnerable situation with Fr. O'Neill and subjected to his sexual misconduct and harm.

72. Defendants owed Plaintiff a duty of reasonable care because they assumed duties owed to Plaintiff and had superior knowledge about the risk that Fr. O'Neill posed to Plaintiff, the risk of abuse in general in their programs, and/or the risks that their facilities posed to minor children. Defendants had the duty to protect the moral purity of Plaintiff and other Roman Catholic children within The Diocese of Rochester.

73. Defendants owed Plaintiff a duty of reasonable care because they assumed that duty and because they solicited youth and parents for participation in their youth programs, including Plaintiff.

74. Defendants owed Plaintiff a duty of reasonable care because they undertook custody of minor children, including Plaintiff.

75. Defendants owed Plaintiff a duty of reasonable care because they promoted their facilities and programs as being safe for children, including Plaintiff.

76. Defendants owed Plaintiff a duty of reasonable care because they held out their agents including Fr. O'Neill, to the public, including Plaintiff, as safe to work with children.

77. Defendants owed Plaintiff a duty of reasonable care because they encouraged parents and children, including Plaintiff, to spend time with their agents; and/or encouraged their agents, including Fr. O'Neill, to spend time with, interact with, and recruit children.

78. Defendants had a duty to Plaintiff to protect him from harm because Defendants' actions created a foreseeable risk of harm to Plaintiff.

79. Defendants breached their duties by exposing Plaintiff to a known pedophile.

80. Defendants breached their duties by exposing Plaintiff to a priest Defendants knew or should have known was a pedophile

81. Defendants breached their duties by recruiting, hiring, and maintaining Fr. O'Neill in a position of authority over children, including Plaintiff.

82. Defendants breached their duties by exposing Fr. O'Neill to children, including Plaintiff.

83. Defendants breached their duties by leaving Fr. O'Neill alone with children unsupervised, including Plaintiff.

84. Defendants breached their duties by inducing Plaintiff and his parents to entrust Plaintiff to Fr. O'Neill.

85. Defendants breached their duties by failing to follow policies and procedures designed to prevent child sex abuse and/or failing to implement sufficient policies and procedures to prevent child sex abuse.

86. Defendants breached their duties by failing to take reasonable measures to make sure that policies and procedures to prevent child sex abuse were working.

87. Defendants breached their duties by failing to adequately inform families and children, including Plaintiff, of the known risks of child sex abuse within The Diocese of Rochester.

88. Defendants breached their duties by holding out their employees and agents, including Fr. O'Neill, as safe and wholesome for children to be with.

89. Defendants breached their duties by failing to investigate risks of child molestation.
90. Defendants breached their duties by failing to properly train the workers at institutions and programs within Defendants' geographical confines.
91. Defendants breached their duties by failing to have any outside agency test their safety procedures.
92. Defendants breached their duties by failing to protect the children in their programs from child sex abuse and failing to adhere to the applicable standard of care for child safety.
93. Defendants breached their duties by failing to investigate the amount and type of information necessary to represent the institutions, programs, and leaders and people as safe.
94. Defendants breached their duties by failing to respond to and/or investigate information of improper conduct with children of their employee and agent, Fr. O'Neill.
95. Defendants breached their duties by failing to properly train their employees to identify signs of child molestation by fellow employees.
96. Defendants breached their duty to use ordinary care in their recruitment of altar boys, including Plaintiff.
97. Defendants breached their duty of care by recruiting, hiring, and maintaining Fr. Robert O'Neill as a priest who recruited altar boys.
98. Defendants breached their duty of care by maintaining a dangerous program for recruitment of altar boys (i.e., a priest Defendants knew or should have known posed a risk of pedophilic harm to recruit them).
99. Defendants breached their duty of care by holding out their altar boy program as safe and moral, knowing it was not safe and moral.
100. Defendants breached their duty of care by failing to investigate the amount and type

of information necessary to create a safe altar boy program and by failing to implement policies and procedures in that program to protect children from foreseeable harm.

101. Defendants breached their duty of care by failing to properly train their employees to identify signs of child molestation by fellow employees.

102. Defendants breached their duties to Plaintiff by holding out clergy members, including Fr. O'Neill, as safe, moral, and trustworthy people and by failing to warn Plaintiff and his family of the risk that Fr. O'Neill posed and the known risks of child sexual abuse by clerics in general.

103. Defendants breached their duties to Plaintiff by failing to warn Plaintiff about any of the knowledge that the Defendants had about child sex abuse perpetrated by clergy or Fr. O'Neill.

104. Defendants breached their duties to Plaintiff by failing to report Fr. O'Neill's abuse of children to the police and law enforcement.

105. Defendants further breached their duties by hiding a pedophile and engaging in a cover-up of abuse perpetrated by Fr. O'Neill.

106. At all times material, Fr. O'Neill's sexual abuse of Plaintiff was foreseeable. As discussed above, the problem of clergy sexual abuse of minors is well-documented throughout the history of the Roman Catholic Church.

107. As a direct and proximate result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, psychological injuries, loss of ability to engage in gainful employment, loss of income and other losses and damages, past and future.

108. As a direct result of Defendants' negligence, gross negligence, and breaches of duty, Plaintiff was prevented and will continue to be prevented from performing his normal daily activities and obtaining the full enjoyment of life.

109. As a direct and proximate result of Defendants' negligence, gross negligence and breaches of duty, Plaintiff has incurred and will continue to incur expenses for medical and psychological treatment, therapy and counseling.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester, Church of the Nativity for compensatory damages, costs and such other and further relief as this Court deems proper.

SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

RESPONDEAT SUPERIOR/VICARIOUS LIABILITY

110. Plaintiff repeats and re-alleges each and every allegation set forth in all paragraphs as if fully set forth herein.

111. Among other duties, Fr. O'Neill was employed by, or an agent of, Defendants The Diocese of Rochester and Church of the Nativity. He was employed to minister the sacraments and operate programs, including youth, altar boy and spiritual counseling programs at Church of the Nativity.

112. Defendants created a master-servant relationship with Fr. O'Neill, employing him to interact and supervise children participating in programs at Church of the Nativity.

113. At all times material, Fr. O'Neill was on duty as a priest 24 hours per day, 7 days per week.

114. At all times material, Fr. O'Neill remained under the direct supervision, employ, and control of the Defendants.

115. At all times material, Defendants had the right to control the manner and means of Fr. O'Neill's performance.

116. At all times material, Defendants paid Fr. O'Neill's salary and paid for Fr. O'Neill's health insurance and other benefits.

117. At all times material, Defendants furnished an office and other materials, supplies and tools required for Fr. O'Neill to perform in his position as a priest.

118. At all times material, Defendants controlled the premises where Fr. O'Neill performed as a priest.

119. At all times material, Defendants had the power to terminate the employment of Fr. O'Neill.

120. Defendants allowed Fr. O'Neill to have unsupervised and unlimited access to young children at Church of the Nativity, located at the time within The Diocese of Rochester and within the parish of the Church of the Nativity.

121. The unwanted contact by Fr. O'Neill upon Plaintiff occurred during his regular working hours, while performing duties of a priest on behalf of his employers.

122. The sexual contact by Fr. O'Neill occurred in the course and scope of his employment with Defendants.

123. The sexual contact by Fr. O'Neill was generally foreseeable to Defendants.

124. Upon information and belief, before Plaintiff was sexually abused by Fr. O'Neill, Defendants had actual or constructive knowledge of material facts regarding Fr. O'Neill's sexual misconduct, impulses, and behavior but failed to act on that knowledge and exposed Plaintiff as a child to Fr. O'Neill, thereby increasing the likelihood that Plaintiff would be harmed.

125. The sexual contact by Fr. O'Neill was closely connected to what he was employed

to do as a priest with Defendants, and/or was otherwise naturally incidental to his job duties.

126. Fr. O'Neill's conduct was motivated, at least in part, by a desire to serve his employer's business interests or otherwise meet the objectives of his employment, however misguided.

127. Alternatively, Fr. O'Neill's conduct constituted an authorized, minor deviation from his employment that was authorized and/or ratified by Defendants.

128. As a direct and proximate result of Fr. O'Neill's conduct, Plaintiff has suffered damages as alleged herein.

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and Church of the Nativity for compensatory damages, costs and such other and further relief as this Court deems proper.

THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

NEGLIGENT HIRING, RETENTION, AND SUPERVISION

129. Plaintiff repeats and realleges all paragraphs above as if set forth fully herein.

130. At all material times, Defendants The Diocese of Rochester and Church of the Nativity, by and through their agents, managers, employees, and directors owed a duty to Plaintiff to use reasonable care to protect his safety, care, well-being and health while he was under the care and custody or in the presence of the Defendants. These duties encompassed the use of reasonable care in the hiring, retention and supervision of Fr. O'Neill and otherwise providing a safe environment for children.

131. Prior to the sexual misconduct perpetrated by Fr. O'Neill upon Plaintiff, Defendants The Diocese of Rochester and Church of the Nativity knew, or in the exercise of reasonable care, should have known, of the general problem of Catholic clergy engaging in sexual misconduct with

children who were in The Diocese of Rochester and Church of the Nativity programs.

132. Prior to the sexual misconduct perpetrated by Fr. O'Neill upon Plaintiff, Defendants The Diocese of Rochester and Church of the Nativity knew, or in the exercise of reasonable care, should have known, that Fr. O'Neill was unfit for the duties assigned to him, that he did not exhibit appropriate behavior with children, and he otherwise posed a risk of perpetrating unwanted sexual contact upon children, including Plaintiff.

133. Given actual or constructive knowledge of Fr. O'Neill's dangerous propensities, the Defendants had a duty to act reasonably in all decisions relating to his hiring, supervision, and retention as an employee.

134. Defendants failed to exercise reasonable care in one or more of their decisions to hire, supervise, and retain Fr. O'Neill and therefore exposed Plaintiff to an unreasonable risk of harm.

135. Defendants affirmed and ratified Fr. O'Neill's misconduct with Plaintiff. Given the actual and constructive knowledge of the likelihood that Fr. O'Neill and/or other clergy would engage children in unwanted sexual contact, the unwanted sexual contact of Plaintiff was reasonably foreseeable to Defendants.

136. Defendants The Diocese of Rochester and Church of the Nativity, and their agents, had superior knowledge of the likelihood that Fr. O'Neill would engage in unwanted sexual contact with children that he encountered in his position as a priest and had a duty to take precautions to lessen the risk that Plaintiff would be the victim of unwanted sexual contact.

137. At all relevant times, Defendants The Diocese of Rochester's and Church of the Nativity's acts and omissions created an environment which fostered unwanted sexual contact and exploitation against the people it had a duty to protect, including Plaintiff.

138. At all relevant times, Defendants had inadequate policies and procedures to protect children entrusted to their care and protection, including Plaintiff, which substantially contributed to the creation of a dangerous environment.

139. As a direct and proximate result of the negligence and gross negligence of Defendants, Plaintiff suffered damages, including but not limited to severe and permanent psychological, emotional and physical injuries, shame, humiliation and the inability to lead a normal life, and has incurred and/or will incur costs for treatment in the future. These injuries are permanent and ongoing in nature.

///

///

///

///

///

///

///

///

///

///

///

///

///

WHEREFORE, Plaintiff demands judgment against Defendants The Diocese of Rochester and Church of the Nativity for compensatory damages, costs and such other and further relief as this Court deems proper.

Rochester, New York

Dated: August 14, 2019

Yours, etc.,



Leander James
James, Vernon & Weeks, PA
20 Vesey Street
New York NY 10007

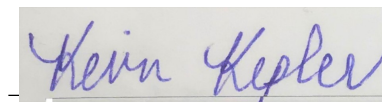
1626 Lincoln Way
Coeur d'Alene, ID 83815
(888) 667-0683
ljames@jvwlaw.net

VERIFICATION

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) ss:

Kevin Kepler affirms under penalty of perjury, that he has read the foregoing COMPLAINT and knows the contents thereof; that the same is true to the affiant's own knowledge, except as to those matters therein stated to be on information and belief and as to these matters affiant believes them to be true.

Dated: Mesa, Arizona
August 14, 2019



Kevin Kepler